

EXHIBIT 7

THOMAS V. CHRISTOPHER (SBN#185928)
Thomas@ThomasChristopherLaw.com
THE LAW OFFICES OF THOMAS V. CHRISTOPHER
555 California Street, Suite 4925
San Francisco, California 94104
Telephone: (415) 659-1805
Facsimile: (415) 659-1950

Attorney for Non-Party
3TAPS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

hiQ Labs, Inc.,

Plaintiff,

v.

LinkedIn, Corp.,

Defendant.

CASE No.: 17-cv-03301-EMC

**NON-PARTY 3TAPS, INC.'S
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD
BE RELATED UNDER N.D. CAL. CIVIL
LOCAL RULE 3-12**

**DECLARATION OF THOMAS V.
CHRISTOPHER [filed under separate
cover]**

**[PROPOSED] ORDER [filed under separate
cover]**

**Date: No hearing requested
Time: No hearing requested
Ctrm: No hearing requested
Judge: Hon. Edward M. Chen**

Trial date: None Set.

3taps, Inc. (“3taps”) respectfully submits this Administrative Motion to Consider Whether Cases Should Be Related under N.D. Cal. Civil Local Rule 3-12. As explained in more detail below, the matter of 3taps, Inc. v. LinkedIn Corp., No. 4:18-cv-00855-NC, filed February 8, 2018 (“LinkedIn II”), is related to a matter pending before this Court: hiQ Labs v. LinkedIn Corp., (N.D. Cal. Case No. 3:17-cv-03301-EMC) (“LinkedIn I”), under the criteria set forth in Local Rule 3-12. Indeed, the failure to relate these matters would likely lead to a significant waste of the parties’ and court’s resources and would raise the possibility of inconsistent and unworkable outcomes since the plaintiffs in LinkedIn I and II seek essentially the same declaratory relief on the very same issue of law against the same defendant related to the same activity by that defendant.

I. BACKGROUND ON THE TWO RELATED ACTIONS

LinkedIn II, currently assigned to the Honorable Nathanael Cousins of this court, is an action for declaratory relief against LinkedIn Corporation (“LinkedIn”). See Christopher Decl. Ex. A at ¶23. The plaintiff in LinkedIn II seeks a declaration that it will not violate the Computer Fraud and Abuse Act, 18 U.S.C. Section 1030 (the “CFAA”), if it uses automated means to access and use publicly-available data from LinkedIn’s website. See Christopher Decl. Ex. A at ¶23. Thus, the plaintiff in LinkedIn II is seeking the same declaratory relief on the same issue of law against the same defendant as is being currently sought by the plaintiff in LinkedIn I. See Christopher Decl. Ex. B at ¶35.

Moreover, the background facts leading to the filing of LinkedIn I are essentially identical to the background facts leading to the filing of LinkedIn II. The plaintiff in LinkedIn II is engaged in the business of using automated means to access and use publicly-available content from the internet. Christopher Decl. Ex. A at ¶10. The plaintiff in LinkedIn II received a “cease and desist” letter from LinkedIn asserting that the accessing and using by it of publicly-available information on LinkedIn’s website would violate the CFAA. See Christopher Decl. Ex. A at ¶18. As the Court may recall, this same threat by LinkedIn making the same claim under the CFAA resulted in the filing of LinkedIn I. See Christopher Decl. Ex. B. at ¶¶ 25, 34.

1 **II. LINKEDIN I SHOULD BE RELATED TO LINKEDIN II UNDER**
2 **CIVIL LOCAL RULE 3-12.**

3 3taps respectfully submits that LinkedIn II clearly meets the criteria for relation to
4 LinkedIn I under the Local Rules of this Court governing the relation of cases. Cases are
5 deemed related under Civil Local Rule 3-12 where:

6 3-12. Related Cases

7 (a) **Definition of Related Cases. An action is related to another**
8 **when:**

- 9 (1) The actions concern substantially the same parties, property,
10 transaction or event; and
11 (2) It appears likely that there will be an unduly burdensome
12 duplication of labor and expense or conflicting results if the
13 cases are conducted before different Judges.

14 See Civil L.R. 3-12.

15 **LinkedIn I and II Involve Substantially the Same Parties**

16 LinkedIn I and II involve substantially the same parties. The defendant in each case
17 is identical: LinkedIn Corporation. With respect to the named plaintiffs, case law
18 interpreting Local Rule 3-12 holds that the plaintiffs need not be identical, so long as the
19 matter involves the same defendant. Financial Fusion, Inc. v. Ablaise Ltd., No. C-06-2451
20 PVT, 2006 WL 4734292, at *3 (N.D. Cal. Dec. 18, 2006) (finding that relation under Civil
21 Local Rule 3-12 is proper even if the plaintiffs in the two actions are not the same where
22 both suits involved the identical defendant); Beauperthuy v. 24 Hour Fitness USA, Inc., No.
23 06-0715-SC, 2012 WL 3757486, at * 4, n.10 (N.D. Cal. July 5, 2012) (holding that the
24 second prong of the relation test is the most critical and that relation is proper even if the
25 parties are not identical).¹

26 Thus, the first criteria under Civil Local Rule 3-12 regarding substantially the same

27 ¹ Despite the fact that there is no legal requirement that the plaintiffs be the same in
28 the two actions sought to be related, it is worth noting that, in this case, even though the
29 plaintiffs are not “identical”, they are also not completely unrelated. As noted in 3taps’
30 complaint against LinkedIn, 3taps and hiQ have common partial owners. Christopher Decl.
31 Ex. A at ¶2.

parties is met here.

The Two Actions Concern The Same “Property”

LinkedIn I and II also concern the same “property” (*e.g.*, the facts and information that are publicly-available on LinkedIn’s webpage, which LinkedIn claims are its property). In both cases, the plaintiffs seek to access and use the facts and information that are made publicly-available by LinkedIn on its webpage, and in each case, LinkedIn has asserted that a federal statute (*e.g.*, the CFAA) would be violated if the plaintiffs were to access those materials. Compare Christopher Decl. Ex. A at ¶23, and Exhibit B at ¶35.

Assignment of LinkedIn I and II to Separate Judges Would Waste Judicial Resources And Create A Danger of Inconsistent and Unworkable Rulings.

The assignment of LinkedIn I and II to different judges of this court would not only waste the parties’ and court’s resources, it would create a danger of inconsistent and unworkable declaratory judgments on the same issue of law against the same defendant related to the same subject matter.

The plaintiffs in LinkedIn I and II have both received “cease and desist” letters from LinkedIn claiming that accessing the facts and information that LinkedIn makes publicly available on its website would violate the CFAA. In response, both plaintiffs are now seeking a declaratory judgment on the same issue of law against LinkedIn, specifically:

- In LinkedIn II, 3taps “seeks a declaration that it will not be in violation of the CFAA if it proceeds to access and use publicly-available facts and information from LinkedIn’s webpage.” Christopher Decl. Ex. A at ¶23.
- In LinkedIn I, hiQ “seeks a declaration that it has not and will not be in violation of the CFAA by continuing to access and copy data from the public member profile sections of LinkedIn . . .” Christopher Decl. Ex. B at ¶35.

3taps respectfully submits that given the essentially identical nature of the declaratory judgments sought by the plaintiffs in LinkedIn I and II against the same defendant, having these matters decided by separate judges of this court raises a serious risk of inconsistent and unworkable rulings. What if one judge rules that LinkedIn can use the

1 CFAA to prohibit third parties from accessing and using publicly-available facts from
 2 LinkedIn's website, and another judge rules that LinkedIn is within its rights to do so?
 3 What if one judge rules that LinkedIn is prohibited from employing technical measures to
 4 prevent third party "scrapers" from accessing its website and another judge permits
 5 LinkedIn to do so? Such inconsistent rulings regarding LinkedIn's rights and obligations in
 6 protecting the publicly-available data on its webpage from third parties would not only
 7 create an unseemly conflict between the rulings, it would put LinkedIn in the impossible
 8 position of being under separate and irreconcilable court orders regarding the technical
 9 protections it is permitted to use to block third party access to its webpage.

10 The potential for inconsistent and irreconcilable declaratory judgments related to the
 11 same conduct is simply unworkable, but easily avoided by relating these matters. Case law
 12 supports relation in these circumstances. Where, as here, different plaintiffs seek similar
 13 declaratory relief on a similar issue from the same defendant, relation under Local Rule 3-
 14 12 is proper. Our Children's Earth Foundation v. National Marine Fisheries Service, No.
 15 14-4365 SC, 2015 WL 4452136, at * 12 (N.D. Cal. July 20, 2015) (relating actions seeking
 16 similar declaratory relief against defendant even though plaintiffs were not identical where
 17 cases involved overlapping and related issue of law).

18 Moreover, since the CFAA is a *criminal* statute as well as a civil one, the
 19 possibility of inconsistent rulings raises the very serious concern of having one plaintiff
 20 potentially subject to criminal prosecution for the same activity on LinkedIn's webpage that
 21 another judge of this court may hold are lawful and not in violation of the CFAA. 3taps
 22 respectfully submits that the possibility of inconsistent declaratory judgments on the same
 23 issue of law involving the same defendant and the same "property" and conduct by that
 24 defendant should be avoided where the underlying declaratory judgements relate to the
 25 interpretation of a criminal statute.

26 III. **LINKEDIN'S CONTENTION THAT THIS CASE SHOULD BE**
 27 **"RELATED" TO A CASE IN WHICH FINAL JUDGMENT WAS**
 28 **ENTERED ALMOST THREE YEARS AGO IS MERITLESS.**

Prior to filing this Motion, 3taps' counsel asked LinkedIn's counsel if they would

1 stipulate to relating LinkedIn II to LinkedIn I. In response, LinkedIn’s counsel refused to
 2 so stipulate and asserted that LinkedIn II should instead be related to another action *that did*
 3 *not involve LinkedIn and in which final judgment was entered against 3taps almost three*
 4 *years ago and never appealed*. Specifically, LinkedIn took the remarkable position that
 5 this matter is related to Craigslist, Inc. v. 3taps, Inc., et. al., (3:12-cv-03816-CRB) (the
 6 “Craigslist Matter”). See Christopher Decl. ¶4.

7 3taps respectfully submits that this matter should not be related to the Craigslist
 8 Matter for at least three reasons. For one, as noted above, the court entered final judgment
 9 against 3taps in the Craigslist Matter almost 3 years ago, in June of 2015, and that judgment
 10 was never appealed or contested. See Christopher Decl. Ex. C at 1. Moreover, the plaintiff
 11 in the Craigslist Matter is not involved in any way in LinkedIn II, the defendant in LinkedIn
 12 I and II was not a party to the Craigslist Matter. Indeed, it appears from LinkedIn’s
 13 counsel’s email that the basis for contending that LinkedIn II should be related to the
 14 Craigslist Matter is the demonstrably wrong contention that Judge Breyer retained
 15 “ongoing jurisdiction” over the legal issue at issue in LinkedIn II. Id. In fact, Judge Breyer
 16 retained jurisdiction over the Craigslist Matter only for two narrow purposes, neither of
 17 which are even remotely relevant here: (i) for purposes of enforcing claims of violation of
 18 his order in the Craigslist Matter, and (ii) for “disputes arising in connection with the
 19 Settlement Agreement entered by the parties hereto.” Id. at Ex. C at 5. Since the action
 20 and final judgment in the Craigslist Matter pertained *solely* to activities as between
 21 Craigslist and 3taps (LinkedIn was not a party), it is inconceivable how this routine and
 22 limited retention of jurisdiction supports relating LinkedIn II to the Craigslist Matter.

23 DATED: February 14, 2018

24 THE LAW OFFICES OF THOMAS V.
 25 CHRISTOPHER

26 By: /s/ Thomas Christopher
 27 THOMAS CHRISTOPHER
thomas@thomaschristopherlaw.com
 28 Attorney for Non-Party
 3TAPS, INC.